

Rule 45. Rules Concerning Voting System Standards for Certification.

Jan 16, 2007 Comments by Harvie Branscomb

The proposed rule takes major steps in the right direction in regard to security, adding specific requirements should be met by tests performed by the state certification process. Unfortunately, the portions of Rule 45 which pertain to non security criteria for performance and quality of the voting machinery (and system of procedures to operate it) has not benefited from a similar rewrite. I have therefore edited the proposed Rule (from Dec 15 2006) to reflect proposed changes which apply this logic.

There is substantial agreement by election quality advocates who range across both major parties that current election rules need to be rewritten according to basic principles of accuracy, reliability, transparency, security, anonymity, and privacy. It is generally agreed that the public deserves a systematic and responsible approach having a measurable success in understandable terms. This new process should include substantive participation from qualified and critical individuals from the public who lack the vested interests inherent in working as a county clerk or for the SOS or for a manufacturer or a testing agency. These must be people who are willing to ask the obvious but difficult questions, for example, “does the system count votes accurately at election scale”.

The Secretary of State should reach out to utilize knowledge of a wide variety of experts inside and outside government and the election industry. The Secretary of State’s proposal clearly would benefit from the assistance of experts in election equipment and election procedure who can and will focus on verifiable quality assurance. Also needed as a part of this effort are technically knowledgeable representatives of the public and also those who are aware from their experience on canvass boards and logic and accuracy tests and as candidates and as electors about what kinds of problems can materialize with voting procedures and equipment in the field (in addition to the usual participation of election officials such as county clerks).

The troublesome but predictable problem with the conventional optical scan voting machines currently counting paper ballots in Eagle County is an example of how our certified voting equipment and the associated procedures in place differ from the ideal. With the best certification specifications, criteria and procedures, I know that Eagle County’s long used election equipment could be made to work in a manner more consistent with the public’s vital interest in election accuracy. The Clerk has recognized substantial deficiencies in the operation of these machines and has chosen to perform a special test of the performance of these machines using voted folded ballots. This has been motivated by documented cases of votes appearing not only due to nearness to folds of the ballot, but also due to unintentional transfer of toner from one portion of the paper ballot to a zone which causes interpretation as a vote.

The present document appears to reflect a lack of awareness in regard to actual field conditions for elections, and hence if implemented almost guarantees a future generation

of election equipment which will blur our future Colorado elections with attendant inconsistencies and failures, generating countless contests of elections, delays in vote tabulation, etc. These can mostly be avoided with properly designed technical criteria for voting equipment certification, including specific criteria for acceptance and denial.

What is also needed is a similar effort to establish better election procedures which must be designed to match the anticipated failures of existing as well as new equipment and covering at least voter authentication, ballot handling, equipment operation, equipment and software testing, post election audit, vote tabulation, transmission and reporting, re-marking of ballots, recounting, etc.

In certifying the voting equipment on behalf of the State of Colorado it behooves the secretary of state to methodically learn from the past. There have certainly been problems with elections in counties around Colorado. Since millions of dollars are spent on campaigns in these Colorado elections, not to mention the amount spent in federal races run on the same machines, it certainly makes sense to be absolutely sure that the equipment being recommended by the state does take into account weaknesses and problems that have been found in the past, with a suitable defenses or corrective measures.

I would hope to eventually be able to get an answer to the following questions.

Is there any record of voting machine difficulties or of any other exceptions to the usual processes of elections recorded by the SOS or county clerks?

Is there a practice of logging any such problem while it is occurring to make a record which could be used by the canvass board and or later in the process of redefinition of certification criteria, rules and even laws?

Do canvass boards ever produce a written record of their discussions and decisions?

Are these records maintained somewhere?

Are election judges given a chance to express their opinions or their observations or concerns about things that may have gone unexpectedly wrong or right with an election?

Are other election staff and officials given such a chance to express themselves about an election?

Are paid officials in any way prevented from comment by any law or common practice?

If any of these records exist are they kept in a public record which can be collected from several counties for analysis and review by the SOS or others?

Such a record and better yet a collection of records would surely be helpful in defining the criteria for testing and certification of new voting machine technologies.

I recommend to the secretary of state to revisit not only Rule 45 in its entirety, but the remaining rules pertaining to elections to determine which of the terms of these rules are not consistent with accurate, reliable, transparent, secure, anonymous and private elections.

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